

#### **§ 417.21**

hearing, shall be transmitted to the officer or officers accused of serious misconduct and other interested persons, insofar as they are known, and shall inform them of (a) the time, place, and nature of the hearing; (b) the legal authority and jurisdiction under which the hearing is to be held; (c) the matters of fact and law asserted; and (d) their rights to challenge the appointment of certain of, or all of, the officers of the union to conduct the hearing in accordance with this subpart. The labor organization shall promptly inform its members of the provisions of the notice. Copies of the notice shall be made available for inspection at the office of the labor organization.

#### **§ 417.21 Transcript.**

It shall be within the discretion of the Director to require an official reporter to make an official transcript of the hearings. In the event he does so require, copies of the official transcript shall be made available upon request addressed to the Director in accordance with the provisions of part 70 of this title.

[50 FR 31310, Aug. 1, 1985, as amended at 63 FR 33779, June 19, 1998; 78 FR 8025, Feb. 5, 2013]

#### **§ 417.22 Vote among members of the labor organization.**

Within a reasonable time after completion of the hearing, and after proper notice thereof, a secret ballot vote shall be conducted among the members of the labor organization in good standing on the issue of whether the accused officer or officers shall be removed from office. The vote shall be in accordance with the constitution and by-laws of the labor organization insofar as they are not inconsistent with the provisions of the Act or this part 417. The presiding officer or officers at the taking of such vote shall entertain objections or suggestions as to the rules for conducting the vote, eligibility of voters, and such other matters as may be pertinent; and shall rule on such questions, shall establish procedures for the conduct of the vote, and for tabulation of the ballots; and shall appoint observers and compile a list of eligible voters. All rulings of the pre-

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siding officer or officers shall be subject to the provisions of § 417.19.

#### **§ 417.23 Report to the Director.**

Following completion of the hearing and vote, the Director's Representative shall file a report with the Director setting out the results of the balloting; and pertinent details of the hearing and vote. Notice thereof shall be given to the membership of such labor organization promptly and copies shall be furnished to all interested parties.

[29 FR 8264, July 1, 1964, as amended at 78 FR 8025, Feb. 5, 2013]

#### **§ 417.24 Appeal to the Director.**

(a) Within 15 days after mailing of the report of the Director's Representative, any interested party may appeal the conduct of the hearing or vote or both by filing written exceptions with the Director. Blanket appeals shall not be received. Impertinent or scandalous matter may be stricken by the Director, or an appeal containing such matter or lacking in specifications may be dismissed.

(b) Upon review of the whole record, the Director shall issue a decision or may order further hearing, a new vote, or such further proceedings as he deems appropriate.

[29 FR 8264, July 1, 1964, as amended at 50 FR 31310, Aug. 1, 1985; 78 FR 8025, Feb. 5, 2013]

#### **§ 417.25 Certification of results of vote.**

Upon receipt of the report of the Director's Representative on the hearing and vote on removal, the Director shall certify the results of the vote to the court as required by section 402(c) of the Act.

[29 FR 8264, July 1, 1964, as amended at 78 FR 8025, Feb. 5, 2013]

### **PART 451—LABOR ORGANIZATIONS AS DEFINED IN THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959**

#### **Sec.**

- 451.1 Introductory statement.
- 451.2 General.
- 451.3 Requirements of section 3(i).
- 451.4 Labor organizations under section 3(j).
- 451.5 "State or local central body."

451.6 Extraterritorial application.

AUTHORITY: Secs. 3, 208, 401, 73 Stat. 520, 529, 532 (29 U.S.C. 402, 438, 481); Secretary's Order No. 03-2012, 77 FR 69376, November 16, 2012.

SOURCE: 28 FR 14388, Dec. 27, 1963, unless otherwise noted.

#### § 451.1 Introductory statement.

(a) This part discusses the meaning and scope of sections 3(i) and 3(j) of the Labor-Management Reporting and Disclosure Act of 1959<sup>1</sup> (hereinafter referred to as the Act). These provisions define the terms "labor organization" and "labor organization \* \* \* in an industry affecting commerce" for purposes of the Act.<sup>2</sup>

(b) The Act imposes on labor organizations various obligations and prohibitions relating generally, among other things, to the reporting of information and election and removal of officers. Requirements are also imposed on the officers, representatives, and employees of labor organizations. In addition, certain rights are guaranteed the members thereof. It thus becomes a matter of importance to determine what organizations are included within the applicability of the Act.

(c) The provisions of the Act, other than title I and amendments to other statutes contained in section 505 and title VII, are subject to the general investigatory authority of the Secretary of Labor embodied in section 601<sup>3</sup> (and delegated by him to the Director), which empowers him to investigate whenever he believes it necessary in order to determine whether any person has violated or is about to violate such

provisions. The correctness of an interpretation of these provisions can be determined finally and authoritatively only by the courts. It is necessary, however, for the Director to reach informed conclusions as to the meaning of the law to enable him to carry out his statutory duties of administration and enforcement. The interpretations of the Director contained in this part, which are issued upon the advice of the Solicitor of Labor, indicate the construction of the law which will guide him in performing his duties unless and until he is directed otherwise by authoritative rulings of the courts or unless and until he subsequently decides that a prior interpretation is incorrect. However, the omission to discuss a particular problem in this part, or in interpretations supplementing it, should not be taken to indicate the adoption of any position by the Director with respect to such problem or to constitute an administrative interpretation or practice. Interpretations of the Director with respect to the meaning of the terms "labor organization" and "labor organization \* \* \* in an industry affecting commerce," as used in the Act, are set forth in this part to provide those affected by the provisions of the Act with "a practical guide \* \* \* as to how the office representing the public interest in its enforcement will seek to apply it."<sup>4</sup>

(d) To the extent that prior opinions and interpretations relating to the meaning of "labor organization" and "labor organization \* \* \* in an industry affecting commerce" are inconsistent or in conflict with the principles stated in this part, they are hereby rescinded and withdrawn.

[28 FR 14388, Dec. 27, 1963, as amended at 50 FR 31309, Aug. 1, 1985; 78 FR 8026, Feb. 5, 2013]

#### § 451.2 General.

A "labor organization" under the Act must qualify under section 3(i). It must also be engaged in an industry affecting commerce. In accordance with the broad language used and the manifest congressional intent, the language will be construed broadly to include all labor organizations of any kind other

<sup>1</sup>73 Stat. 520, 521, 29 U.S.C. 402.

<sup>2</sup>It should be noted that the definition of the term "labor organization," as well as other terms, in section 3 are for purposes of those portions of the Act included in titles I, II, III, IV, V (except section 505) and VI. They do not apply to title VII, which contains amendments of the National Labor Relations Act, as amended, nor to section 505 of title V, which amends section 302 (a), (b), and (c) of the Labor Management Relations Act, 1947, as amended. The terms used in title VII and section 505 of title V have the same meaning as they have under the National Labor Relations Act, as amended, and the Labor Management Relations Act, 1947, as amended.

<sup>3</sup>Sec. 601, 73 Stat. 539, 29 U.S.C. 521.

<sup>4</sup>*Skidmore v. Swift & Co.*, 323 U.S. 134, 138.

than those clearly shown to be outside the scope of the Act.

**§ 451.3 Requirements of section 3(i).**

(a) *Organizations which deal with employers.* (1) The term “labor organization” includes “any organization of any kind, any agency, or employee representation committee, group, association, or plan \* \* \* in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, \* \* \*.” The quoted language is deemed sufficiently broad to encompass any labor organization irrespective of size or formal attributes. While it is necessary for employees to participate therein, such participating employees need not necessarily be the employees of the employer with whom the organization deals. In determining who are “employees” for purposes of this provision, resort must be had to the broad definition of “employee” contained in section 3(f) of the Act.<sup>5</sup> It will be noted that the term includes employees whose work has ceased for certain specified reasons, including any current labor dispute.

(2) To come within the quoted language in section 3(i) the organization must exist for the purpose, in whole or in part, of dealing with employers concerning grievances, etc. In determining whether a given organization exists wholly or partially for such purpose, consideration will be given not only to formal documents, such as its constitution or bylaws, but the actual functions and practices of the organization as well. Thus, employee committees which regularly meet with management to discuss problems of mutual interest and handle grievances are “labor

organizations”, even though they have no formal organizational structure.<sup>6</sup>

(3) Since the types of labor organizations described in subparagraph (2) of this paragraph are those which deal with employers, it is necessary to consider the definition of “employer” contained in section 3(e) of the Act in determining the scope of the language under consideration.<sup>7</sup> The term “employer” is broadly defined to include “any employer or any group or association of employers engaged in an industry affecting commerce” which is “an employer within the meaning of any law of the United States relating to the employment of any employees \* \* \*.” Such laws would include, among others, the Railway Labor Act, as amended, the Fair Labor Standards Act, as amended, the Labor Management Relations Act, as amended, and the Internal Revenue Code. The fact that employers may be excluded from the application of any of the foregoing acts would not preclude their qualification as employers for purposes of this Act. For example, employers of agricultural labor who are excluded from the application of the Labor Management Relations Act, as amended, would appear to be employers within the meaning of this Act.

(4) In defining “employer,” section 3(e) expressly excludes the “United States or any corporation wholly owned by the Government of the United States or any State or political

<sup>6</sup>*National Labor Relations Board v. Cabot Carbon Co.*, 360 U.S. 203.

<sup>7</sup>Sec. 3(e) reads: “‘Employer’ means any employer or any group or association of employers engaged in an industry affecting commerce, (1) which is, with respect to employees engaged in an industry affecting commerce, an employer within the meaning of any law of the United States relating to the employment of any employees or (2) which may deal with any labor organization concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and includes any person acting directly or indirectly as an employer or as an agent of an employer in relation to an employee but does not include the United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof.”

<sup>5</sup>Sec. 3(f) reads: “‘Employee’ means any individual employed by an employer, and includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice or because of exclusion or expulsion from a labor organization in any manner or for any reason inconsistent with the requirements of this Act.”

subdivision thereof.” The term “political subdivision” includes, among others, counties and municipal governments. A labor organization composed entirely of employees of the governmental entities excluded by section 3(e) would not be a labor organization for the purposes of the Act with the exception of a labor organization composed of employees of the United States Postal Service which is subject to the Act by virtue of the Postal Reorganization Act of 1970. (Organizations composed of Federal government employees that meet the definition of “labor organization” in the Civil Service Reform Act or the Foreign Service Act are subject to the standards of conduct requirements of those Acts, 5 U.S.C. 7120 and 22 U.S.C. 4117, respectively. In addition, labor organizations subject to the Congressional Accountability Act of 1995 are subject to the standards of conduct provisions of the Civil Service Reform Act pursuant to 2 U.S.C. 1351(a)(1). The regulations implementing the standards of conduct requirements are contained in parts 457–459 of this title.) However, in the case of a national, international or intermediate labor organization composed both of government locals and non-government or mixed locals, the parent organization as well as its mixed and non-government locals would be “labor organizations” and subject to the Act. In such case, the locals which are composed entirely of government employees would not be subject to the Act, although elections in which they participate for national officers or delegates would be so subject.<sup>8</sup>

(b) *Organizations which may or may not deal with employers.* Regardless of whether it deals with employers concerning terms and conditions of employment and regardless of whether it is composed of employees, any conference, general committee, joint or system board, or joint council engaged in an industry affecting commerce and which is subordinate to a national or international labor organization is a “labor organization” for purposes of the Act. Included are the area con-

ferences and the joint councils of the International Brotherhood of Teamsters and similar units of other national and international labor organizations.

[28 FR 14388, Dec. 27, 1963, as amended at 42 FR 59071, Nov. 15, 1977; 50 FR 31310, Aug. 1, 1985; 62 FR 6093, Feb. 10, 1997]

#### § 451.4 Labor organizations under section 3(j).

(a) *General.* Section 3(j) sets forth five categories of labor organizations which “shall be deemed to be engaged in an industry affecting commerce” within the meaning of the Act. Any organization which qualifies under section 3(i) and falls within any one of these categories listed in section 3(j) is subject to the requirements of the Act.

(b) *Certified employee representatives.* This category includes all organizations certified as employee representatives under the Railway Labor Act, as amended, or under the National Labor Relations Act, as amended.

(c) *Labor organizations recognized or acting as employee representatives though not certified.* This category includes local, national, or international labor organizations which, though not formally certified, are recognized or acting as the representatives of employees of an employer engaged in an industry affecting commerce. Federations, such as the American Federation of Labor and Congress of Industrial Organizations, are included in this category,<sup>9</sup> although expressly excepted from the election provisions of the Act.<sup>10</sup>

(d) *Organizations which have chartered local or subsidiary bodies.* This category includes any labor organization that has chartered a local labor organization or subsidiary body which is within either of the categories discussed in paragraph (b) or (c) of this section. Under this provision, a labor organization not otherwise subject to the Act, such as one composed of Government employees, would appear to be “engaged in an industry affecting commerce” and, therefore, subject to the Act if it charters one or more local

<sup>8</sup> See also, § 452.12 of this chapter which discusses the election provisions of the Act.

<sup>9</sup> See *National Labor Relations Board v. Highland Park Mfg. Co.*, 341 U.S. 322. See also paragraph (d) of this section.

<sup>10</sup> Act, sec. 401(a).

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labor organizations which deal with an “employer” as defined in section 3(c).<sup>11</sup> This category includes, among others, a federation of national or international organizations which directly charters local bodies.<sup>12</sup>

(e) *Local or subordinate bodies which have been chartered by a labor organization.* This category includes any labor organization that has been chartered by an organization within either of the categories discussed in paragraph (b) or (c) of this section as the local or subordinate body through which such employees may enjoy membership or become affiliated with the chartering organization.

(f) *Intermediate bodies.* Included in this category is any conference, general committee, joint or system board, or joint council, subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the categories discussed in paragraphs (b), (c), (d) and (e) of this section. Excluded from this definition, however, are State or local central bodies.<sup>13</sup> (It should be noted that the above listing is included in the Act as words of illustration, not of limitation.) The following is a description of typical intermediate bodies:

(1) *Conference.* A conference is an organic body within a national or international labor organization formed on a geographical area, trade division, employer-wide or similar basis and composed of affiliate locals of the parent national or international organization. The various conferences of the International Brotherhood of Teamsters, for example, are in this category.

(2) *General committees.* Typical of those bodies are the general committees of the railroad labor organizations. The term includes any subordinate unit of a national railroad labor organization, regardless of the title or designation of such unit, which under the constitution and bylaws of the organization of which it is a unit, is authorized to represent that organization on a particular railroad or portion

thereof in negotiating with respect to wages and working conditions.<sup>14</sup> General committees are sometimes known as system boards of adjustment, general grievance committees, and general committees of adjustment. They are to be distinguished from system boards of adjustment established under the Railway Labor Act, which are composed of management and labor members. These joint labor-management boards are not included within the definition of a labor organization under the Act.

(3) *Joint or system boards.* As mentioned above, in connection with railroad labor organizations the term “general committee” includes system boards. However, as used here the term has a broader meaning and includes, among others, boards which have members from more than one labor organization.

(4) *Joint councils.* A joint council is composed of locals not necessarily of the same national or international labor organization located in a particular area, such as a city or county. These bodies are sometimes called joint boards, joint executive boards, joint councils, or district councils. Included, for example, are councils of building and construction trades labor organizations.

[28 FR 14388, Dec. 27, 1963, as amended at 42 FR 59071, Nov. 15, 1977]

### § 451.5 “State or local central body.”

(a) The definition of “labor organization” in section 3(i) and the examples of labor organizations deemed to be engaged in an industry affecting commerce in section 3(j)(5) both except from the term “labor organization” a “State or local central body.” As used in these two sections, the phrase *State or local central body* means an organization that:

(1) Is chartered by a federation of national or international unions; and

(2) Admits to membership local unions and subordinate bodies of national or international unions that are affiliated with the chartering federation within the State or local central body’s territory and any local unions

<sup>11</sup> See § 451.3(a).

<sup>12</sup> See also paragraph (c) of this section.

<sup>13</sup> For discussion of State and local central bodies see § 451.5.

<sup>14</sup> See definition of term “General Committee” under Railroad Retirement Act in 20 CFR 201.1(k).

or subordinate bodies directly affiliated with the federation in such territory; and

(3) Exists primarily to carry on educational, legislative and coordinating activities.

(b) The term does not include organizations of local unions or subordinate bodies (1) of a single national or international union; or (2) of a particular department of a federation or similar association of national or international unions.

[29 FR 8060, June 25, 1964]

#### **§ 451.6 Extraterritorial application.**

(a) It is not the purpose of the Act to impose on foreign labor organizations any regulation of the activities they carry on under the laws of the countries in which they are domiciled or have their principal place of business. The applicability of the Act is limited to the activities of persons or organizations within the territorial jurisdiction of the United States. The foregoing would be applicable, for example, to Canadian locals affiliated with international labor organizations organized within the United States.

(b) On the other hand, labor organizations otherwise subject to the Act are not relieved of the requirements imposed upon them with respect to actions taken by them in the United States or which will have effect in the United States, by virtue of the fact that they have foreign members or affiliates that participate in these actions. For example, a national or international labor organization which conducts its required election of officers by referendum or at a convention of delegates must comply with the election provisions of the Act,<sup>15</sup> even though members of foreign locals participate in the balloting, or delegates of foreign locals participate in the election at the convention.

(c) Similarly, the provisions of the Act with respect to imposition of trusteeships<sup>17</sup> are applicable to United States national or international labor organizations subject to this Act even though the action of the United States

organization is taken with respect to a foreign local.

### **PART 452—GENERAL STATEMENT CONCERNING THE ELECTION PROVISIONS OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959**

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<sup>15</sup> [Reserved]

<sup>16</sup> See § 452.13 of this chapter.

<sup>17</sup> See title III of the Act.